Supreme Court, U.S.
FILED
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CLERK

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No. 88-7194

In The

Supreme Court of the United States

October Term, 1989

ARTHUR LAJUANE TAYLOR

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed May 10, 1989
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RELEVANT DOCKET ENTRIES

Date	*Filings/Proceedings*
6/10/87	Superseding Indictment Filed
1/7/88	Notice of Punishment Enhancement Filed
1/15/88	Plea Agreement Filed
3/1/88	Defendant's Motion to Strike Notice of Punishment Enhancement and Memorandum in Support Filed
3/2/88	Sentencing Proceedings Before the Honorable John F. Nangle
3/2/88	Judgment and Commitment Order Filed
3/10/88	Notice of Appeal Filed

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	No. S1-87-147 CR(1)
ARTHUR LAJUANE TAYLOR,	)	
Defendant.	)	Filed JUN 10 1987

COUNT I

The Grand Jury charges that:

On or about September 25, 1986, in the City of St. Louis, Missouri, within the Eastern District of Missouri,

ARTHUR LAJUANE TAYLOR,

the defendant herein, having previously been convicted:

1. On or about May 27, 1963, in the Circuit Court of the City of St. Louis, Missouri, in cause numbers 489-L, 490-L, and 491-L of the offenses of two counts of Burglary Second Degree and Stealing, and Burglary Second Degree, all of which are felonies under the laws of the State of Missouri;

2. On or about October 5, 1971, in the Circuit Court of the City of St. Louis, Missouri, in cause number 2218-T of the offense of Burglary Second Degree, a felony under the laws of the State of Missouri;

3. On or about June 22, 1971, in Circuit Court of the City of St. Louis, Missouri, in cause number 448-S of the

offense of Robbery First Degree, a felony under the laws of the State of Missouri;

did knowingly and intentionally possess, a firearm in commerce and affecting commerce, to wit: a Volunteer, model MK45, .45 caliber semi-automatic rifle bearing serial number 0754.

In violation of title 18, United States Code, Appendix Section 1202(a)(1).

COUNT II

The Grand Jury further charges that:

On or about December 3, 1986, in the City of St. Louis, Missouri, within the Eastern District of Missouri;

ARTHUR LAJUANE TAYLOR,

the defendant herein, having previously been convicted of:

1. On or about May 27, 1963, in the Circuit Court of the City of St. Louis, Missouri, in cause numbers 489-L, 490-L, and 491-L of the offenses of two counts of Burglary Second Degree and Stealing, and Burglary Second Degree, all of which are felonies under the laws of the State of Missouri;

2. On or about October 5, 1971, in the Circuit Court of the City of St. Louis, Missouri, in cause number 2218-T of the offense of Burglary Second Degree, a felony under the laws of the State of Missouri;

3. On or about June 22, 1971, in Circuit Court of the City of St. Louis, Missouri, in cause number 448-S of the offense of Robbery First Degree, a felony under the laws of the State of Missouri;

did knowingly and intentionally possess, a firearm in commerce and affecting commerce, to wit: a Volunteer, model MK45, .45 caliber semi-automatic rifle bearing serial number 64293.

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT III

The Grand Jury further charges that:

On or about February 2, 1987, in the City of St. Louis, Missouri, within the Eastern District of Missouri;

ARTHUR LAJUANE TAYLOR,

the defendant herein, having previously been convicted of:

1. On or about May 27, 1963, in the Circuit Court of the City of St. Louis, Missouri, in cause numbers 489-L, 490-L, and 491-L of the offenses of two counts of Burglary Second Degree and Stealing, and Burglary Second Degree, all of which are felonies under the laws of the State of Missouri;

2. On or about October 5, 1971, in the Circuit Court of the City of St. Louis, Missouri, in cause number 2218-T of the offense of Burglary Second Degree, a felony under the laws of the State of Missouri;

3. On or about June 22, 1971, in Circuit Court of the City of St. Louis, Missouri, in cause number 448-S of the offense of Robbery First Degree, a felony under the laws of the State of Missouri;

did knowingly and intentionally possess, a firearm in commerce and affecting commerce, to wit: a Volunteer, model MK45, .45 caliber semi-automatic rifle bearing serial number 64292.

In violation of Title 18, United States Code, Section 922(g)(1).

A TRUE BILL.

/s/ Carol (illegible)
FOREPERSON

THOMAS E. DITTMEIER
UNITED STATES ATTORNEY

/s/ Charles A. Shaw
CHARLES A. SHAW
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Caption omitted in printing)

NOTICE OF PUNISHMENT ENHANCEMENT

Comes now the United States of America, by Thomas E. Dittmeier, United States Attorney for the Eastern District of Missouri and Richard L. Poehling, Assistant United States Attorney for such District and gives notice to the defendant that upon conviction of the charges set forth in the indictment in this cause, the defendant is subject to the enhanced punishment provisions of Title 18, United States Code Appendix II, Section 1202(a)(1) and Title 18, United States Code, Section 924(e)(1) which provides for imprisonment for a term not less than fifteen (15) years and/or a fine of up to $250,000. The defendant shall not be eligible for probation and/or parole. This punishment range is applicable to each count of the indictment.

In support of the imposition of the enhanced punishment provisions referred to above, the Government intends to utilize the following felony convictions of the defendant:

1. On or about May 27, 1963, in the Circuit Court of the City of St. Louis, Missouri, in cause numbers 489-L, 490-L, and 491-L of the offenses of two counts of Burglary Second Degree and Stealing, and Burglary Second Degree, all of which are felonies under the laws of the State of Missouri;

2. On or about October 5, 1971, in the Circuit Couirt (sic) of the City of St. Louis, Missouri, in cause number

2218-T of the offense of Burglary Second Degree, a felony under the laws of the State of Missouri;

3. On or about June 22, 1971, in Circuit Court of the City of St. Louis, Missouri, in cause number 448-S of the offense of Robbery First Degree, a felony under the laws of the Stae (sic) of Missouri;

4. On December 30, 1966 in the Superior Court for the County of Los Angelas (sic), State of California in cause number 328211 of the offense of Assault With Force, a felony under the laws of California;

5. On December 1, 1966 in the Superior Court for the County of Los Angelas (sic), State of California in cause number 307388 of the offense of Assault By Means Of Force Likely To Produce Great Bodily Injury, a felony under the laws of California.

[Jurat omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Caption omitted in printing)

MOTION OF DEFENDANT TO STRIKE NOTICE OF PUNISHMENT ENHANCEMENT

Comes now Arthur Lajuane Taylor, by Bruce D. Livingston, and requests that this Court strike the government's Notice of Punishment Enhancement under 18 U.S.C. § 924(e)(1) ("Notice"), because the defendant does not have the requisite felony convictions to make him subject to enhanced punishment.

Punishment enhancement is inappropriate with respect to defendant because three of the five convictions relied upon by the government in its Notice filed January 7, 1988 are not predicate offenses within the scope of 18 U.S.C. § 924(e). The convictions for Burglary Second Degree and Stealing relied upon by the government in ¶¶ 1 & 2 of its Notice are not felonies of the type intended by Congress to qualify defendant for punishment enhancement.

Similarly, the government's reliance on the conviction in ¶ 5 of its Notice is inappropriate. After further investigation of this offense, the United States Probation Office for the Eastern District of Missouri concluded that the offense relied upon in ¶ 5 (which actually was convicted on December 1, 1965 not 1966 as set forth in the government's Notice), was not Mr. Taylor. U.S. Probation Officer Donna R. Hoosman specifically requested that this conviction be confirmed and was told by the California authorities that they could not confirm that Mr. Taylor was indeed the person who had been convicted of the

offense. Ms. Hoosman therefore omitted this offense from the convictions listed in defendant's pre-sentencing report. Accordingly, the government's reliance upon the alleged conviction in California in Cause No. 307388, set forth in its Notice at ¶ 5, is unfounded.

Accordingly, defendant moves that this Court strike the government's notice of enhancement under 18 U.S.C. § 924(e)(1). Instead defendant should be sentenced under the provisions of 18 U.S.C. § 922(a)(1) (maximum five year sentence for violating § 922(g)).

[Jurat omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

(Caption omitted in printing)

Statement of facts from memorandum in Support of Defendant's motion to strike

* * *

STATEMENT OF FACTS

In the government's Notice of Punishment Enhancement, it lists and relies upon five felony convictions. Punishment enhancement under 18 U.S.C. § 924(e)(1) is appropriate if the defendant has "three previous convictions . . . for a violent felony or a serious drug offense." 18 U.S.C. § 924(e)(1). None of the convictions relied upon by the government in its Notice is a drug offense. Taylor's convictions must therefore be "violent felonies" for punishment enhancement to apply.

First, the conviction referenced in ¶ 5 of the government's Notice is not a conviction of defendant. The United States District Court's probation office for this district specifically inquired into the alleged conviction of defendant on December 1, 1965 in Cause No. 307388 in the Superior Court for the County of Los Angeles, State of California. Probation Officer Hoosman specifically inquired into the validity of this conviction and concluded that it was not the defendant. Upon telephoning the appropriate authorities in California, she was told that the 1965 conviction could not be confirmed as positively being defendant in this action Arthur LaJuane Taylor. Accordingly Ms. Hoosman omitted all mention of the offense from defendant's pre-sentencing report. Because the federal probation office for this district did

not include the conviction, relied upon by the government in its Notice at ¶ 5, as a prior conviction of the defendant, the government's reliance upon that conviction is inappropriate and should be stricken by this Court.

With respect to defendant's convictions for Burglary Second Degree, relied upon by the government in its Notice at ¶¶ 1-2, neither of those convictions involved any threat of violence or physical danger to any person. The 1971 conviction relied upon in ¶ 2 involved the burglary of a service station at 2:38 a.m. on September 9, 1971. Two persons were arrested as they existed (sic) from the window of the service station at 3108 South Kingshighway. The third defendant Arthur Taylor, did not enter the building but was found in the cab of a "1967 Chevrolet van type truck." No one was present at the service station which was closed and left with its "night lights" turned on.[1] *See* Police Report, St. Louis Police Department, Sept. 9, 1971. (Attached hereto).

In the 1965 conviction, relied upon by the government in ¶ 1 of its notice of punishment enhancement, no police report is available. However, the United States Probation Office for this District reports that Taylor drove with a friend to the friend's girlfriend's house. Taylor's friend went into the girlfriend's home and returned with items from her house which he told Taylor were his own.

---

[1] It is appropriate to examine the actual, underlying nature of the prior convictions to determine whether they are "violent felonies" constituting predicate offenses for punishment enhancement in felon-in-possession cases. *United States v. Sherbondy*, 652 F.Supp. 1267, 1269 (C.D. Cal. 1987).

Taylor waited in the car while his friend was in the girlfriend's house. Taylor was later charged and convicted of burglary second degree.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(caption omitted in printing)

SENTENCING PROCEEDINGS – March 2, 1988

BEFORE THE HONORABLE JOHN F. NANGLE

[2](Wednesday morning, March 2nd, 1988, 10:00 a.m., defendant and counsel present)

THE COURT: United States versus Arthur Taylor.

Mr. Livingston, Mr. Taylor, Mr. Poehling.

Go ahead, Mr. Livingston.

Needless to say a major question concerning this sentencing has been briefed by you, studied by me; right? I mean I represent that to you – considered by me not only, you know, on recent days but previously. And I do not agree with your assessment of the law. I'm going to tell you it's not all black and white and I don't agree with the law. I mean I don't like the idea despite Mr. Taylor's pretty miserable record. I don't like the idea of giving him this hunk of sentence. To me it's ridiculous. But I'm not Congress.

We can go into greater detail and there may be some things that you wanted to point out to me, but I have studied the statutes – I have had this problem before – and I have looked at your brief. And you did a good job. I want to commend you on it. And I trust – I don't guess I have to say I trust that you will appeal from my decision and see what the Eighth Circuit does in that regard.

But you might – you know it's just – I'm not telling you it's all black and white, there is some shade in there.

Second degree, I don't observe any reference in the law to any degrees in burglary nor in the cases. They don't define [3] it. I know that Mr. Taylor had a couple burglary convictions that were burglary second degree as we call that in Missouri.

So that we get the record clear on the offenses, let's make sure that there is – there is one of the offenses that the probation office or no one could check out. Isn't there one alleged offense in California? Is that right, Mr. Poehling and Mr. Livingston?

MR. POEHLING: There was one offense, Your Honor, that the probation people were unable to verify and that was from the State of California assault to do great bodily harm with force I believe. It occurred in approximately 1965.

THE COURT: I'm trying to remember. But, anyway, the offenses listed in Count – same ones, of course, in all the counts but the offenses listed therein, let's just go down the line and make sure that as far as the record is concerned Mr. Taylor agrees or doesn't agree with them.

Let's see, this plea was to Count –

MR. POEHLING: Count III I believe, Your Honor.

THE COURT: Count III. So we will work with that one. I guess they are all the same.

And I'm troubled also by the fact that, you know, 1963 offenses. Personally it bothers me but I just don't –

my hands are tied in my judgment. And it's one of the laws Congress enacted, we all know the reasons.

But this included an offense on May 27th, 1963. The [4] offenses of two counts of burglary second degree and stealing and burglary second degree. Is that correctly stated in there, Mr. Taylor and Mr. Poehling? Have you had certified copies of those?

MR. POEHLING: Yes, Your Honor. Those occurred in the Circuit Court of the City of St. Louis, yes.

Mr. Livingston has had access to the certified copies.

THE COURT: I think what we ought to do is to make the certified copies part of the record so that an appellate judge should he see them can look and see how they appear.

MR. POEHLING: I have no objection to that and I can furnish them to the Court.

MR. LIVINGSTON: Would it be appropriate to include the police report, the one police report that was available that's attached to my brief?

THE COURT: I don't think so. I think when you brief it, should you do that, you can – you're going to refer to Mr. Taylor's participation in the acts and development of that?

MR. LIVINGSTON: Right.

THE COURT: I don't have any problem with it. What I would think, if an appellate court should determine that I'm wrong I think they would send it back to me for a hearing in that regard. You know what I'm

saying? To develop – I think they would want me to go into detail. I got enough problems doing my own job without doing theirs. But you might just – [5] I think if they want it they will get it. So let's just leave this thing with the certified copies of the offenses and then I'm sure –

Let's see, then October 5th, 1971 is another burglary in the Circuit Court of the City of St. Louis. Is that a correct charge and allegation, Mr. Taylor and Mr. Livingston?

MR. LIVINGSTON: I believe it is.

THE COURT: And June 22nd, '71 is robbery first degree. Is there any question about that one?

THE DEFENDANT: No, sir.

THE COURT: So that we are clear, let me see, burglary second – well, you claim that actually three of the offenses were burglaries; right? Three of the four?

MR. LIVINGSTON: No, Your Honor. There are five convictions, two of which –

THE COURT: One of them is kind of left out, the California. You say five including California?

MR. LIVINGSTON: That's right.

THE COURT: We don't have the California conviction as a matter of record here; am I correct?

MR. POEHLING: No, that's incorrect. It was not on the indictment but it was filed, the notice of punishment enhancement that the government filed on January 7th of 1988 sets out the ones you just talked about plus –

THE COURT: Do you have certified copies of them?

[6] MR. POEHLING: Yes.

THE COURT: Okay. That's what I didn't understand. So you do have certified copies and you have seen the certified copies?

MR. LIVINGSTON: Yes, I have seen them.

THE COURT: Let's order that that be made part of the record so we got a full record.

Go ahead, Mr. Livingston.

MR. LIVINGSTON: The only conviction of the five in the government's notice that we are challenging whether or not it actually is the defendant is listed in paragraph 5 of their notice of punishment enhancement. That's – I believe there's a typo, I think it's December 1, 1965 that the certified copies will show is the date. But at any rate the paragraph 5 conviction Mr. Taylor contends is not him. The probation office of this court researched that and attempted to verify that it was him and could not do so. And we would say it's inappropriate to consider that offense for punishment enhancement.

THE COURT: Mr. Poehling, what is your response to that?

MR. POEHLING: Your Honor, the probation office has attempted to verify that and have not been able to.

THE COURT: Is that right, Ms. Hoosman?

MS. HOOSMAN: Yes, sir.

THE COURT: So there's no verification of the charge in paragraph 5.

[7] MR. POEHLING: So with respect of the one that is set forth in number 5, Your Honor, I would agree to withdraw that.

THE COURT: That's what I thought. I had eliminated it.

MR. POEHLING: The fourth one which is under point four which is the California conviction for assault with force, that's not disputed as I understand it. Mr. Taylor acknowledges that is him and it's a valid conviction.

THE COURT: Is that right, Mr. Taylor?

THE DEFENDANT: Yes, Sir.

THE COURT: So we are down to the charges in the notice of punishment enhancement of the four paragraphs we have eliminated the fifth.

Now, with regard to that, one of them is robbery first; right, Mr. Livingston?

MR. LIVINGSTON: That's correct.

THE COURT: Another is assault with force. That's the California thing; right? You're challenging the October 5th, '71 burglary second?

MR. LIVINGSTON: And the May 27th, 1963 burglary second.

THE COURT: And the '63 burglary second. Okay.

You don't have that in here, Mr. Poehling – oh, yes you do. Good Lord. Yes, May 27th, '63 is the first one charged in the indictment and it's also the first one set

out in the notice of punishment enhancement. Okay. They are both the first [8] paragraph and second paragraph of the notice of punishment enhancement referring to burglary second degree, and it's the defendant's position that that's not a viable crime, et cetera, a degree of burglary that was not contemplated by Congress when it enacted 924; is that correct, Mr. Livingston?

MR. LIVINGSTON: That's my position.

THE COURT: Now, separate and apart from that and over and above that is there anything else you want to say to me on this sentencing matter?

MR. LIVINGSTON: Well, I guess if your mind is made up I don't need to waste the Court's time. I do think that my arguments have some validity but we won't go into that.

As far as where you would sentence the defendant, if you recall he was sent to Springfield. A medical report was released and should be in the file indicating substance abuse problem and some other psychological problems and I would appreciate it if the Court would recommend that he at least initially be sent there.

THE COURT: To Springfield?

MR. LIVINGSTON: Yes.

THE COURT: Did you want to add anything, Mr. Taylor? Say anything to me?

MR. TAYLOR: No.

THE COURT: Mr. Poehling?

MR. POEHLING: No, Your Honor.

[9] THE COURT: With regard to the location of Mr. Taylor's incarceration I'm obliged to leave that up to the United States Prison – Department of Justice, U. S. Prison Agency. However, if there is any question about his need for at least temporary incarceration or checking out at Springfield, Ms. Hoosman, would you check into that and see if that is suitable? And if it is appropriate, why, then it should be done.

In view of my approach to this I'm not going to make a lot of comments. I think it's – I do not personally approve of this enactment but I'm faced with it and, as I say, it's not because Mr. Taylor has led such an exemplary life, you skirted around and got yourself into an awful lot of trouble, but that still to me doesn't justify what I have to do here.

So it will be the sentence of this Court on Count III that the defendant be committed to the custody of the Attorney General for imprisonment for a period of fifteen years and he shall not be eligible for probation or parole during that period.

I will order the special assessment of fifty dollars.

Part of this record will include the certified copies of the prior convictions as we indicated in our discussion. And my action is, of course, not based upon the – a little more definitive here on what I will call the second – paragraph 5 of the notice of punishment enhancement, California conviction, which has not been supported in the record.

[10] The other certified copies of convictions will be ordered to be made a part of this record on appeal as well

as the defendant's motion to strike notice of punishment enhancement, which I will deny.

Gentlemen, I think that does it.

You may step down.

MR. POEHLING: Your Honor, the government would ask leave of Court to dismiss Counts I and II of the indictment.

THE COURT: So ordered.

Mr. Livingston, you have done a good job and stick with it.

MR. LIVINGSTON: Thank you, Your Honor.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

(Caption omitted in printing.)

JUDGMENT IN A CRIMINAL CASE

Case Number: S1-87-147Cr (1)

THE DEFENDANT ENTERED A PLEA OF:

[XX] guilty as to count III of the Superseding Indictment.

FILED MAR 2, 1988

EYVON MENDENHALL
E. DISTRICT OF MO.
U. S. DISTRICT COURT

THE DEFENDANT IS CONVICTED OF THE OFFENSE OF: did knowingly and intentionally possess a firearm in commerce and affecting commerce, to wit: a Volunteer, model MK45, .45 caliber semi-automatic rifle bearing serial number 64292 after having been previously been convicted of felonies in the Circuit Court of the City of St. Louis,

In violation of Title 18, United States Code, Section 922(g) (1), as charged in Count III of the Superseding Indictment,

IT IS THE JUDGMENT OF THIS COURT THAT: pursuant to the enhancement provisions of 18 U.S.C., Section 924(e), the defendant is confined to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) years as to and under the charge contained in Count III of the Superseding Indictment and shall not become eligible for probation or parole.

Defendant is assessed $50.00 under Count III of the Superseding Indictment pursuant to the Comprehensive Crime Control Act of 1984.

Ordered that the original Indictment and Counts I and II of the Superseding Indictment are hereby dismissed.

Defendant is remanded to the U.S. Marshal.

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;

(2) associate only with law-abiding persons and maintain reasonable hours;

(3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);

(4) not leave the judicial district without permission of the probation officer;

(5) notify your probation officer immediately of any changes in your place of residence;

(6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of $50.00 pursuant to Title 18, U.S.C. Section 3013 for Count III. as follows:

IT IS FURTHER ORDERED THAT counts the original Indictment & Counts I & II of the Superseding Indictment are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

[ ] The Court orders commitment to the custody of the Attorney General and recommends:

Date of Imposition of Sentence
March 2, 1988
Honorable John F. Nangle
Date March 2, 1988

ORDER GRANTING PROBATION

STATE OF MISSOURI,	)	CIRCUIT COURT,
	)	CRIMINAL CAUSES
vs.	)	DIV. 1
ARTHUR LEE TAYLOR	)	CASE NO. 489-L,
	)	490-L & 491-L
	)	September 10, 1963

Defendant, appearing in person and by attorney, upon judgment of guilty of the offense of BURGLARY SECOND DEGREE AND STEALING (2 chgs) and BURGLARY SECOND DEGREE heretofore on May 27, 1963 entered, with sentence thereon deferred by the Court; said defendant is now sentenced upon his conviction to serve three years on each cause to run concurrently and execution of sentence suspended, imposition of sentence suspended for a period of three (3) years the Court being satisfied that defendant if permitted to go at large will not again violate the law, said ARTHUR LEE TAYLOR is hereby placed on probation, to report to and be under the supervision of the Probation Officer of the Court, for a period of three (3) years from this date and until discharged by order of Court.

To ARTHUR LEE TAYLOR

It is the order of the Court that you shall comply with the following general and special conditions of probation. The general conditions are as follows: (a) Refrain from the violation of any state and federal penal laws. (b) Live a clean, honest and temperate life. (c) Keep good company and good hours. (d) Keep away from all undesirable places. (e) Work regularly. When out of work, notify your probation officer at once. (f) Do not leave or remain away

from the city or town where you reside without permission of the probation officer. Notify your probation officer at once if you intend to change your address. (g) Contribute regularly to the support of those for whose support you are legally responsible. (h) Report promptly on the dates set forth. If for any unavoidable reason you are unable to do so, communicate with your probation officer without delay. Follow the probation officer's instructions and advice.

The special conditions ordered by the Court are as follows:

Defendant to pay court costs.

Defendant to make resitution in the amount of $15.25 to the Wilkins Food Shop through this office.

You are hereby advised that under the law the Court may at any time revoke your probation for cause, or for a violation of law occurring during the period of probation.

The Court has placed you on probation, believing that if you sincerely try to obey and live up to the conditions of your probation, your attitude and conduct will improve, both to the benefit of the State of Missouri and of yourself.

/s/ Illegible
Judge, Division No. 1

I have read the above order and conditions.

(Signed) Arthur Lee Taylor
Probationer.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI, City of St. Louis.) ss.

BE IT REMEMBERED, That on this the 22nd day of June, 1971 at the regular June Term of the Circuit Court of the City of St. Louis, Division No. 11 thereof, begun and held at the Court House in the City of St. Louis and State aforesaid, before the Honorable Alvin J. McFarland, Judge of the Twenty-second Judicial Circuit of the State of Missouri and Judge of this Court, the following, among other proceedings, were had, to-wit:

THE STATE OF MISSOURI, *Plaintiff*, vs. ARTHUR LEE TAYLOR, *Defendant*.) **Criminal Action, Sentence and Judgment.**

No. 448-S

Now, at this day comes the Assistant Circuit Attorney for the State, and also comes the defendant herein, in person, in the custody of the Sheriff of this City, and in the presence of Raymond Bruntrager, Attorney and Counsel in open Court, whereupon said defendant is informed by the Court that he has heretofore been found guilty of the crime of ROBBERY FIRST DEGREE, and being now asked by the Court if he had any legal cause to show why judgment should not be pronounced against him according to law, and still failing to show such cause, it is therefore sentenced, ordered and adjudged by the Court, that the said defendant: ARTHUR LEE TAYLOR having been found guilty as aforesaid, under an indictment, against him, be committed to State Department of Corrections of the State of Missouri for the period of Five

(5) Years and that the Sheriff of this City shall, without delay, remove and safely convey the said defendant to the said State Department of Corrections, there to be kept, confined and treated in the manner directed by law, and the Director of State Department of Corrections is required to receive and safely keep him the said defendant, in the State Department of Corrections aforesaid, until the judgment and sentence of the Court herein be complied with, or until the said defendant shall be otherwise discharged by due course of law.

It is further considered, ordered and adjudged by the Court, that the State have and recover of said defendant the costs in this suit expended, and that hereof execution issue therefor.

STATE OF MISSOURI, City of St. Louis.) ss.) I, GEORGE M. SOLOMAN,

Clerk of the Circuit Court for Criminal Causes, in and for said City, hereby certify the foregoing to be a full, true and complete copy of the original judgment and sentence of the Court in the cause therein named, as the same appears of record in my office.

WITNESS my hand as Clerk, and the seal of said Court.
Done at office in the City of St. Louis, this 15th day of August, A. D. 1973.

/s/ George M. Solomon

Clerk, Circuit Court of the City of St. Louis, for Criminal Causes.

THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI, City of St. Louis.) ss.

BE IT REMEMBERED, That on this the 5th day of October, 1971 at the regular September Term of the Circuit Court of the City of St. Louis, Division No. 16 thereof, begun and held at the Court House in the City of St. Louis and State aforesaid, before the Honorable William E. Buder, Judge of the Twenty-second Judicial Circuit of the State of Missouri and Judge of this Court, the following, among other proceedings, were had, to-wit:

THE STATE OF MISSOURI, *Plaintiff,*	**Criminal Action, Sentence and Judgment.**
No. 2218-T *vs.*	
ARTHUR TAYLOR, *Defendant.*	

Now, at this day comes the Assistant Circuit Attorney for the State, and also comes the defendant herein, in person, in the custody of the Sheriff of this City, and in the presence of George Hubel, Public Defender, Attorney and Counsel in open Court, whereupon said defendant is informed by the Court that he has heretofore entered plea of guilty of the crime of Burglary Second Degree, said plea being accepted by the Court and being now asked by the Court if he had any legal cause to show why judgment should not be pronounced against him according to law, and still failing to show such cause, it is therefore sentenced, ordered and adjudged by the Court, that the said defendant: ARTHUR TAYLOR having pleaded guilty as aforesaid under an information, against him be committed to the State Department of Corrections of the State of Missouri for the period of Three Years (3) and that the Sheriff of this City shall, without delay, remove and

safely convey the said defendant to the said State Department of Corrections, there to be kept, confined and treated in the manner directed by law, and the Director of State Department of Corrections is required to receive and safely keep him the said defendant, in the State Department of Corrections aforesaid, until the judgment and sentence of the Court herein be complied with, or until the said defendant shall be otherwise discharged by due course of law. It is further ordered by the Court that Jail time prior to conviction be allowed defendant.

It is further considered, ordered and adjudged by the Court, that the State have and recover of said defendant the costs in this suit expended, and that hereof execution issue therefore.

STATE OF MISSOURI, City of St. Louis.) ss.

I, JAMES H. McATEER,

Clerk of the Circuit Court for Criminal Causes, in and for said City, hereby certify the foregoing to be a full, true and complete copy of the original judgment and sentence of the Court in the cause therein named, as the same appears of record in my office.

WITNESS my hand as Clerk, and the seal of said Court.
Done at office in the City of St. Louis, this 6th day of October, A. D. 1971.

/s/ James H. McAteer
Clerk, Circuit Court of the City of St. Louis, for Criminal Causes.

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

JUDGMENT

No. 88-1408EM	*	
United States of America,	*	Appeal from the United
Appellee,	*	States District Court
	*	for the Eastern
vs.	*	District of Missouri
Arthur Lajuane Taylor,	*	
	*	Filed Mar. 29, 1989
Appellant.	*	

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the district court in this cause be affirmed in accordance with the opinion of this Court.

January 4, 1989

A true copy.

ATTEST: /s/ Robert D. St. Vrain
Clerk, U.S. COURT OF APPEALS, EIGHTH CIRCUIT
MANDATE ISSUED 3/20/89

United States Court of Appeals,
Eighth Circuit.

UNITED STATES of America, Appellee,

v.

Arthur Lajuane TAYLOR, Appellant.

No. 88-1408.

Submitted Sept. 19, 1988.

Decided Jan. 4, 1989.

Rehearing and Rehearing En Banc
Denied March 7, 1989.

Before McMILLIAN, Circuit Judge, BRIGHT, Senior Circuit Judge, and FAGG, Circuit Judge.

McMILLIAN, Circuit Judge.

Arthur Lajuana Taylor pleaded guilty in the District Court[1] for the Eastern District of Missouri to one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The district court enhanced Taylor's sentence under 18 U.S.C. § 924(e)(1) because of his previous felony convictions and sentenced him to fifteen years in prison with no possibility of probation or parole. For reversal, Taylor argues that the district court erred in considering his prior convictions for burglary in the second degree under Missouri law for purposes of the sentence enhancement provisions of 18 U.S.C. § 924(e)(1). For the reasons discussed below, we affirm the sentence imposed by the district court.

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[1] The Honorable John F. Nangle, Chief Judge, United States District Court for the Eastern District of Missouri.

Taylor appeals only from the imposition of the enhanced sentence.[2] Because the imposition of the sentence arose out of a guilty plea pursuant to a plea agreement, there are no disputed factual issues. The issue on appeal is one of law only.

We have recently considered the issue of whether burglary in the second degree is a "violent felony" in *United States v. Portwood*, 857 F.2d 1221 (8th Cir.1988) and *United States v. Black*, 857 F.2d 1221 (8th Cir.1988) (consolidated for appeal, hereinafter *Portwood*). The reasoning of *Portwood* applies with equal weight to this case.

The sentence enhancement provisions of 18 U.S.C. § 924(e) come into play when one who has been convicted under 18 U.S.C. § 922(g)(1) has three previous convictions for either a "violent felony or a serious drug offense, or both." 18 U.S.C. § 924(e)(1). The statute defines "violent felony" as "any crime punishable by imprisonment for a term exceeding one year that –

> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct

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[2] A ruling favorable to Taylor on this issue would necessitate a remand for resentencing under 18 U.S.C. § 924(a)(1). A prerequisite to sentence enhancement under 18 U.S.C. § 924(e)(1) is three previous convictions. The prior convictions relied upon by the district court in imposing the enhanced sentence were two for burglary in the second degree, one for robbery in the first degree and one for assault.

> that presents a serious potential risk of physical injury to another.

18 U.S.C. § 924(e)(2)(B).

Burglary in the second degree is defined in the Missouri Revised Statutes as:

> Knowingly enter[ing] unlawfully or knowingly remain[ing] unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.

Mo.Rev.Stat. § 569.170.1.

As a felony, burglary in the second degree is punishable by imprisonment for a term of more than one year. Mo.Rev.Stat. § 556.016.2 The Missouri statutory definition of burglary in the second degree falls squarely within the crimes delineated in 18 U.S.C. § 924(e) as predicate crimes which are to be considered for sentence enhancement purposes.

Taylor argues, however, that burglary in the second degree is not a "violent felony . . . that . . . involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B). The gist of his argument is that Missouri law distinguishes between burglary in the first degree which involves the potential for violence and burglary in the second degree which does not. According to Taylor, if any burglary presents a risk of potential injury to an innocent person, it automatically triggers the application of the more serious charge of burglary in the first degree. Mo.Rev.Stat. § 569.160.1(3). In contrast, a charge of burglary in the second degree is triggered when a burglary of an empty building occurs. Mo.Rev.Stat. § 569.170. Taylor argues that such a burglary

carries with it no potential for violence since there is no one present who can be harmed during the commission of the offense. As such, he argues that burglary in the second degree cannot be a "violent felony" in the sense that Congress intended when it enacted 18 U.S.C. § 924(e)(2)(B).

In response to an argument identical to the one posed by Taylor, we held in *Portwood* that "burglary" in the sentence enhancement statute means "burglary" however a state chooses to define it. We stated that:

> Congress could quite reasonably conclude that no matter what the felon's intent upon breaking in, the property owner may return, a neighbor may investigate, or a law enforcement official may respond. All of these scenarios present a grave threat of harm to persons. A person with . . . prior convictions for burglary, regardless of the details of each burglary, presents the type of potential threat to society that Congress sought to control by the enactment of § 924(e).

857 F.2d at 1224. Based on the reasoning of *Portwood*, we hold that the district court did not err in considering Taylor's prior convictions for Missouri burglary in the second degree as predicate offenses which, in conjunction with his other prior convictions, subject him to an enhanced sentence under 18 U.S.C. § 924(e).

Accordingly, the judgment of the district court is affirmed.

BRIGHT, Senior Circuit Judge, dissenting.

I dissent.

The majority follows the holding of *United States v. Portwood*, 857 F.2d 1221 (8th Cir.1988). In *Portwood*, the court held that Missouri's second degree burglary statute satisfies the definition of burglary as used by Congress in 18 U.S.C. § 924(e). According to *Portwood*, "the statute says 'burglary,' and we take that to mean 'burglary,' however a state may choose to define it." *Portwood*, 857 F.2d at 1223-24. Neither *Portwood*, nor this case, can be justified on careful examination of the federal statute and its legislative history.

Section 924(e) does not define "burglary." As a matter of statutory construction, "[w]here Congress uses terms that have accumulated settled meaning under either equity of the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329, 101 S.Ct. 2789, 2794, 69 L.Ed.2d 672 (1981). *See also Morissette v. United States*, 342 U.S. 246, 263, 72 S.Ct. 240, 249, 96 L.Ed. 288 (1952).

"Burglary" has a common law meaning: "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony." W. LaFave & A. Scott, Jr., *Criminal Law* 792 (2d ed. 1986). Modern status setting out offenses denominated as burglary may or may not possess the common law elements of burglary. As such, burglary does not have an established "modern" meaning. Moreover, no language in the enhancement statute dictates a meaning other than the common law meaning. *See United States v. Headspeth*, 852 F.2d 753, 757-58 (4th Cir.1988).

The Eighth Circuit's interpretation of the statute produces an anomalous result, demonstrated by a comparison to *Headspeth*. In *Headspeth*, the court considered the application of section 924(e) to a defendant with two convictions for robbery and a third conviction, there in question, for the crime of "storehouse breaking," under Maryland law. Conduct amounting to storehouse breaking in Maryland (breaking into a storehouse in day or night with intent to commit a felony or theft of property of the value of $300 or more) would be at least second degree burglary in Missouri.[1] *Compare id.* at 756 (quoting Md.Ann.Code art. 27, § 32 (1971)), *with* majority op. at 626-27. *Headspeth* concluded that storehouse breaking did not constitute burglary under the enhancement provision and thus an enhanced penalty did not apply to the defendant.

The majority, however, subjects Taylor to the enhanced penalty because the State labeled his conduct burglary. Following the majority's analysis to its logical conclusion, a traffic offense of wrongful parking, i.e., the taking of someone else's privilege of using a parking space, if labeled burglary by a state, could be used to enhance a sentence under section 924.

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[1] Taylor was convicted of second degree burglary in 1971. Effective January 1, 1979, the Missouri second degree burglary statute was amended. *See* Mo.Ann.Stat. § 569.170 (Vernon 1979). The majority and the parties cite the present second degree burglary statute. For the purposes of this case, I assume the revision did not make a substantive change in the statute, as it applied to the defendant. *See State v. Eaton*, 504 S.W.2d 12, 15 (Mo.1973).

I do not believe the application of a federal sentence enhancement provision should turn on the differing labels given to similar conduct by the various states. Such application treats similarly situated persons differently for the purpose of a federally imposed sentence. I find it unlikely Congress would have intended such a result. *Cf.* U.S.Sent.Comm.Sent. Guidelines at 2 (Oct. 1987) (Congress sought *uniformity* in sentencing by narrowing the wide disparity in sentences imposed by difference federal courts for similar criminal conduct by similar offenders.) Unfortunately, neither the majority nor *Portwood* gives consideration to section 924's legislative history. *Headspeth*'s analysis of the legislative history is instructive and dispositive. The opinion by Circuit Judge Phillips of the Fourth Circuit stated:

> The government argues, however, that the legislative history and purpose of the § 924(e) sentence enhancement provision demonstrate that Congress intended the term burglary to have a more expansive definition than obtained at common law. We disagree.
>
> At one point, § 924(e) did indeed contain a definition of burglary which would encompass Maryland's storehouse breaking offense. As originally enacted, § 924(e)'s sentence enhancement provision was triggered only by previous convictions for either "robbery" or "burglary." Section 924(e)(2)(B) then specifically defined "burglary" as "any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal of State offense." This definition of burglary, which was considerably broader than its common law counterpart, would of course cover

storehouse breaking, as that offense is defined in Maryland.

But this broad statutory definition of burglary was extremely short-lived. Two days after § 924(e) was enacted – and several months before it became effective – Congress began to consider expanding the list of predicate offenses that would trigger it. *See* Armed Career Criminal Legislation: Hearing on H.R. 4639 and H.R. 4768 before the Subcomm. on Crime of the House Comm. on the Judiciary, 99th Cong., 2d Sess. 44 (May 21, 1986) [hereinafter Hearing]. At the ensuing hearings, there was a general consensus that the specific predicate offenses of "robbery" and "burglary," together with their respective definitions, should be replaced with the more general terms "serious drug offense" and "violent felony." *See* H.R.Rep. No. 849, 99th Cong., 2d Sess. 3 (1986). There was considerable disagreement, though, about how to define the term "violent felony."

> One proposed amendment, introduced by Representative Wyden of Oregon, favored a broad definition which would include crimes against both person and property:
>
> (A) an offense that has as an element the use, attempted use, or threatened use of physical force against the person *or property* of another; or
>
> (B) any felony which, by its nature, involved a substantial risk that physical force against the person *or property* of another may be used in the course of committing the offense.

H.R. 4639, 99th Cong., 2d Sess. (1986) (emphasis added). This proposal drew a flurry of criticism, for the inclusion of property crimes was thought to be an unwarranted extension of federal criminal jurisdiction which would

both encroach upon state sovereignty and overload the federal prison system. *See*, e.g., Hearing at 11 (statement of Rep. Hughes).

A second proposal, introduced by Representatives Hughes and McCollum, would have defined the term "violent felony" much more narrowly as "any State or Federal felony that has *as an element* the use, attempted use, or threatened use of physical force against the *person* of another." H.R. 4768, 99th Cong., 2d Sess. (1986) (emphasis added). This definition would have excluded burglary as a predicate offense, because the actual or threatened use of force against the person is not an element of that offense, either at common law or under the original § 924(e)(2)(B). *See* Hearing at 26 (Statement of Rep. Hughes) (indicating that the exclusion of burglary was deliberate).

The Hughes/McCollum proposal was roundly criticized for its failure to include burglary, arson, and other violent crimes against property which, though they did not have the actual or threatened use of force against the person as an element, nonetheless posed a severe inherent danger to human life. *See*, e.g., Hearing at 9 (statement of Rep. Wyden); *id.* at 23-24 (statement of James Knapp, Deputy Ass't Attorney General, Crim. Div., U.S. Dept. of Justice).

The amendment that was ultimately passed, and now appears as 18 U.S.C. § 924(e)(2)(B), was a compromise of sorts. It defined the term "violent felony" as:

> any crime punishable by imprisonment for a term exceeding one year that –

> (i) has *as an element* the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another.*

Pub.L.No. 99-570, 100 Stat. 3207 (1986) (emphasis added). The § 924(e)(2)(B)(ii) catch-all, which permits certain felonies against property to serve as the basis for sentence enhancement, was designed to satisfy the proponents of H.R. 4639, while the limitation of that provision to crimes which present a serious risk of injury to the *person* was a concession to those who favored H.R. 4768.

> Though the amended statute lists burglary as a predicate offense, it specifically deletes the broad definition of that term which has appeared in the original version of the statute. This omission, viewed in light of the efforts to remove burglary altogether from the list of predicate offenses, suggests that Congress intended to revert to the narrow common law definition of burglary in the amended statute. The common law definition is, to be sure, more consistent with the amended statute's focus on conduct which poses a serious potential risk of injury to the person. Absent more persuasive evidence that Congress intended the term "burglary" in amended § 924(e)(2)(B) to mean something else, we are reluctant to depart from the usual presumption that Congress intended the term to be given its common law meaning. Accordingly, we hold that the term "burglary," as used in § 924(e)(2)(B)(ii), means the breaking and entering of the dwelling house of another, in the nighttime, with the intent to commit a felony therein. So defined, the term "burglary" does not encompass storehouse breaking, as that offense is defined under Maryland law.

Headspeth, 852 F.2d at 757-58 (footnote omitted).

For these reasons, I would hold that Missouri's second degree burglary is not "burglary" under section 924(e)(2)(B)(ii). Additionally, Missouri's second degree burglary does not fall within the statutory phrase of section 924(e) "or otherwise involves conduct that presents a serious risk of physical injury to another." That issue was also addressed in *Headspeth*.

Nor do we believe, as the government suggests, that the crime of storehouse breaking set forth in M.D.Code Ann. art. 27, § 32 is an offense which, in the language of the statute, "otherwise involves conduct that presents a serious potential risk of physical injury to another." As was noted in argument before this court, the catch-all language "otherwise involves conduct that presents a serious potential risk of physical injury to another" is, in context, ambiguous. It could be read to refer, as did H.R. 4639, only to offenses which *by their very nature* pose a risk of injury to another. Since the specifically enumerated crimes that precede the catch-all language – "burglary," "arson," "extortion," and "use of explosives" – are all offenses which by their very nature obviously pose an inherent risk of injury to the person, this interpretation may be the most plausible. On this view, the offense of storehouse breaking at issue here could not fairly be called a "violent felony" within the meaning of § 924(e)(2)(B)(ii), for by its very nature, storehouse breaking generally involves unoccupied buildings. While particular instances of storehouse breaking may, on occasion present some risk of injury to a person, the crime itself is

not one which, like common law burglary, arson, extortion and the use of explosives, poses such a risk *by its very nature.*

Headspeth, 852 F.2d at 758-59.

Missouri law, by definition, distinguishes burglaries which are potentially violent and those not showing violence or threats of violence. Burglary in the first degree encompasses entry into a building when armed or when the burglar causes or threatens physical injury to a person not a participant in the crime or where a person other than a participant is present in the building. Mo.Ann.Stat. § 569.160.1 (Vernon 1979). In contrast, burglary in the second degree, quoted in the majority opinion at 626, may relate to an unarmed burglary of an unoccupied building. *See, e.g., State v. Eaton*, 504 S.W.2d 12 (Mo.1973).

Thus, the conviction for second degree burglary under Missouri law, relating as it does to entry into a structure without an occupant, poses no threat of harm to persons.

The comment in the majority opinion at 627, quoting *Portwood*, 857 F.2d at 1224, that any conduct which may be a burglary under any state law, regardless of the details, "presents the type of potential threat to society that Congress sought to control by the enactment of § 924(e)" does not accord with the legislative history previously quoted in this opinion.

Moreover, it seems perfectly clear that the language of the statutory provision here in question, underlined in

the footnote,[2] relates to crimes other than burglary (under common law), arson, or extortion which may present "a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii).

I add a final comment. Institutionally, a panel of this court must follow the rule of law laid down in a prior panel opinion. Only the en banc court can overrule a published panel opinion. Nevertheless, neither this panel nor this writer need uncritically accept a prior panel opinion which may be flawed. I suggest the rule of this case and *Portwood* in deciding that every burglary defined under state law qualifies as a "violent felony" pursuant to 18 U.S.C. § 924(e)(2)(B)(ii) needs re-examination by this court en banc or by the United States Supreme Court.

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[2] Section 924(e)(2)(B)(ii) reads:

> (ii) is burglary, arson, or extortion, involves use of explosives, or *otherwise involves conduct that presents a serious potential risk of physical injury to another*. (Emphasis added).

UNITED STATES COURT OF APPEALS

For The Eight Circuit

No. 88-1408-EM

United States of America, Appellee, vs. Arthur Lajuane Taylor, Appellant.	* * * * * * * *	Appeal from the United States District Court for the Eastern District of Missouri

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

March 7, 1989

SUPREME COURT OF THE UNITED STATES

No. 88-7194

Arthur Lajuane Taylor,

Petitioner

v.

United States

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Eighth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 10, 1989
